

Message

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Sent: 11/14/2018 1:19:54 AM
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Subject: November 2018 Update on Columbia River/Lower Snake River Temperature TMDL
Attachments: Oct 17 2018 Riverkeeper Motion for Summary Judgement.pdf; Oct 25 2018 US Motion to Extend 30 Days.pdf; Oct 31 2018 Plaintiffs' Opposition to EPA's Motion to Extend Deadline.pdf; Nov 8 2018 Order Denying Motion for Extension of Time.pdf

Dear State Government Colleagues:

This is a follow up to my October 19th message with the latest update on the Columbia/Lower Snake River Temperature TMDL:

- On October 17, 2018, Judge Ricardo Martinez (W.D. Wash.) issued a decision finding that EPA had violated the Clean Water Act (CWA) by failing to undertake its mandatory duty with respect to a temperature Total Maximum Daily Load (TMDL) for the Columbia and Lower Snake Rivers. In 2000, EPA agreed in a Memorandum of Agreement with the States of Washington, Idaho, and Oregon to prepare and issue such a TMDL, but has not yet done so. Plaintiffs alleged that the states having ceded responsibility to EPA plus the lapse of 17 years amounted to a constructive submission of "no TMDL," and that the CWA required EPA to disapprove that submission and issue a completed TMDL. The Court agreed with plaintiffs. The decision includes an order for EPA to act on the constructive submission within 30 days and to issue a new TMDL 30 days thereafter.
- On October 25, 2018, EPA filed a contested motion, seeking relief from the first compliance date in the Court's Order. EPA's Motion to Extend requested an additional 30 days (until December 17, 2018). Columbia Riverkeeper opposed EPA's request for extension of time.
- On November 8, 2018, the Court denied EPA's motion. EPA is still considering its options for whether to appeal the decision and whether to seek a stay. In the meantime, we are proceeding under the assumption that we must take an action on the constructive submission by November 16, and if that action is a disapproval, we must issue a TMDL by December 17, 2018.

- If we must issue a TMDL by December 17, 2018, we plan to conduct a public process and a comment period after issuance which then provides the opportunity for a revised TMDL. We can also engage with federal and state agencies during the public process period on policy issues. We would also expect to conduct government to government consultation with Tribal governments after the issuance of the TMDL if required to meet the December 2018 date.

I have attached the recent court filings and decisions for your information. Given our tight timeline, we are exploring appropriate opportunities to share information with state government colleagues during this accelerated work effort.

Please let me know if you have questions or need more information.

Mary Lou

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